



CORONAVIRUS

BUSINESS EMPLOYEE ASSISTANCE TERMS (“BEAT COVID”)

INTRODUCTION

This is a digest of the Business Employee Assistance Terms measures introduced into Gibraltar law on the 16th April 2020.

This update forms part of TSN's series of notes relating to the Covid-19 crisis. Please visit <https://www.tsnlaw.com/covid-19/> to view all of our guides relating to Gibraltar Covid-19 matters.

These notes are current as of the date of publication and may be subject to changes.

BUSINESS EMPLOYEE ASSISTANCE TERMS

What is BEAT?

On the 24th March 2020 the Government of Gibraltar announced the BEAT Covid measures designed to help Gibraltar cope with the economic impact of the lockdown measures introduced to reduce the spread of Covid-19.

The BEAT protect employees from having their employment terminated as a result of Covid while

guaranteeing them a minimum wage paid by the Government.

When was BEAT introduced?

The Government announced these measures on 24th March 2020. On the 26th March 2020 the Government published Guidance Notes (in English, French, Spanish and German) : <https://www.gibraltar.gov.gi/press-releases/beat-covid-19-measures-english-spanish-french-german-2302020-5749>.

On 16th April 2020, the Government published the regulations which the BEAT measures in the Appropriation (Business Employee Assistance Terms Covid-19) Regulations 2020 made under section 8(1) of the Appropriation Act 2019 (“BEAT Regulations”).

Who is eligible for BEAT?

The measures are available to ‘Inactive Employees’ of businesses in the ‘Relevant Sector’ who would normally be required to work but who are not provided with any work by their employer and are being asked to not attend work by employers because of the restrictions imposed in response to the Covid-19 pandemic. ‘Inactive Self-Employed

Persons' are also eligible. These terms are defined under regulation 3 of the BEAT Regulations and set out below.

Please note that these measures are also applicable to part-time inactive staff.

'Relevant Sector': businesses are defined under the BEAT Regulations as those businesses who do not fall into the excluded sector. Excluded businesses are currently set out in Schedule 2 to the BEAT Regulations:

- Utility Providers;
- Telecommunications Operators and internet service providers;
- Data centre providers;
- Care workers;
- Supermarkets;
- Grocers;
- Butchers;
- Market Stalls;
- Wholesalers with a tobacco licence;
- Petrol stations;
- Food delivery companies;
- Online gaming industry and casinos;
- Accountancy firms;
- Law firms;
- Businesses that are licensed by the GFSC (including insurance businesses and intermediaries);
- Pharmacies;
- Health stores;
- Bunkering, ship chandlers, sea transport and other shipping businesses;
- Property management companies;
- Businesses that are predominantly reliant on Government as their main source of income;
- Any other business deemed to be in substantive operation.

Please note that the Government has changed which businesses are to be considered to fall within excluded sector since they had set these out in their initial policy announcement on the 24th March. It is also possible that this may change again in future. We would therefore suggest that you consider the BEAT Regulations' schedule of excluded businesses as the applicable list of the excluded sector as it may be updated from time to time.

Businesses in the excluded sectors may be treated as a Relevant Sector business on a case by case

basis if there are extenuating circumstances. This is set out in regulation 29 of the BEAT Regulations.

'Inactive Self-Employed Persons' are defined as a self-employed person whose business is primarily or exclusively within a Relevant Sector and who is unable to carry on any business of the kind which the individual would ordinarily carry on due to the restrictions imposed in response to the Covid-19 pandemic.

What employees are excluded?

Regulation 11 sets out a long list of circumstances in which an employee would be excluded. For example, where an employee continues to provide any services to their employer, are working from home or remotely, working from another location that is not the employee's ordinary workplace, where an individual has not been registered as an employee on the 15th March 2020, are in receipt of other non-employment recurring annual income in excess of £15,000 and where that individual has made an application as an Inactive Self-Employed Person. This list is non-exhaustive. Regulation 15 sets out the circumstances in which a self-employed person would be excluded.

How do I apply?

Information on how employers (on behalf of their employees) and self-employed inactive persons may submit an application are set out in regulation 5 and 12 respectively. Individual employees do not apply in their own right. The measures are applicable during the 'relevant period' which is defined under the BEAT Regulations as the period commencing on the 16th April 2020 or the earlier of the 30th June 2020 or such other date as the Government may prescribe.

Employers or self-employed persons should make an application through the Gibraltar Government portal. An application for a BEAT contribution needs to be made during the calendar month to which the contribution would relate and a valid application should be made before the 21st day of each calendar month.

Apply online here:

<https://www.gibraltar.gov.gi/press-releases/beat-covid-19-measures-english-spanish-french-german-2302020-5749> .

What can successful applicants expect to receive by way of contribution?

The BEAT contributions are set out in Schedule 1 of the Regulations. In effect the contribution payable for each full-time Inactive Employee for any calendar month is the sum of £1,155. This is calculated by using 7.5 working hours per day by 22 working days against the BEAT hourly rate of £7 per hour.

Calculating the contributions for part-time employed persons is to be done by multiplying the average hours per day by 22 working days against the BEAT hourly rate.

The contributions for Self-Employed Inactive Persons are to be calculated in the same manner.

Notices, abuses and repayments

The BEAT Regulations require employers to pay employees the full BEAT amount without deductions. Should an employee receive more than one payment for the same calendar month, they are required to notify the Director of Employment.

Any person who intentionally or recklessly fails to comply with the BEAT Regulations or intentionally or recklessly includes any false, inaccurate or misleading information in their application is guilty of an offence and liable to imprisonment for a term of up to 7 years or the statutory maximum fine or both.

Under regulation 28, the Director of Employment may publish in the Gibraltar Gazette the name of any person whom the Director of Employment has reason to believe has failed to comply with the requirements of the BEAT Regulations.

Furthermore, the Commissioner of Income Tax may also determine that any person who intentionally or recklessly failed to comply with the BEAT regulations or intentionally or recklessly included any false, inaccurate or misleading information in their application for a contribution shall be liable to pay 3 times the total amount of contributions received or applied for in the Relevant Period (i.e. between the 16th April 2020 or the earlier of the 30th June 2020 or such other date as the Government may prescribe).

Restriction on terminations of employment

Regulation 17 effectively makes the termination of an employee's employment between the 15th March and the end of the Relevant Period void unless the employer obtains the consent in writing from the Director of Employment. The reduction in business as a result of Covid will not be accepted as a valid reason for termination.

Income Tax and Social Insurance Contributions

Regulation 19 states that no tax is chargeable on any BEAT payment received during the Relevant Period. Social insurance contributions are also waived for such part of a Relevant Period that an employee or Self-Employed Person remains inactive. An inactive employee shall be treated as having made all his respective social insurance contributions for such part of the Relevant Period that he remains inactive.

Insolvency Proceedings

There are also particular provisions under regulation 24 for the instance where employers become insolvent or insolvency proceedings are initiated against an employer during the Relevant Period (i.e. between 16th April 2020 or the earlier of the 30th June 2020 or such other date as the Government may prescribe). Effectively, any penalty or repayment due by that employer to the Government created under the BEAT Regulations is to be given priority in the relevant insolvency proceedings.

Appeals

Regulation 27 establishes a BEAT Covid-19 Appeals Board for the purposes of hearing and determining appeals under the BEAT Regulations. Appeals may be made where there is a refusal of all or part of a BEAT contribution; Failures by employers of Inactive Employees to make a valid application or payment of a BEAT contribution; Any employer, Inactive Employee or Inactive Self-Employed Person being dissatisfied with the calculation of any relevant contribution or payment.

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